Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Emergency Alert System	)	EB Docket No. 04-296

COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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The National Cable & Telecommunications Association ("NCTA") hereby submits its comments in the Further Notice of Proposed Rulemaking in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States. Its members include owners and operators of cable television systems serving 90 percent of the nation's cable customers, and owners of more than 200 cable program networks.

INTRODUCTION AND SUMMARY

In its First Report and Order reviewing the Emergency Alert System ("EAS"), the Commission expanded the rules to cover digital communications technologies, including digital television and radio, digital cable, and satellite television and radio, pursuant to its public safety mission.[1] The purpose was to ensure that as more Americans rely on digital technologies for their communications and entertainment needs, they are able to receive national and regional public alerts and warning in times of emergency. The Further Notice of Proposed Rulemaking seeks input on what actions the Commission should take, along with its federal, state and

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[1] *In the Matter of Review of the Emergency Alert System, First Report and Order and Further Notice of Proposed Rulemaking*, EB Docket No. 04-296, rel. November 10, 2005.

industry partners, to help expedite the development of a more comprehensive, next generation digitally-based public alert and warning system, building on the existing EAS.[2]

In particular, the Further Notice raises specific issues related to, among other things, the development of state-of-the-art system design and message distribution; common protocols that would facilitate simultaneous emergency alerts across various communications platforms; coordination among federal, state and local governments; applicability of EAS to telephone companies providing video programming; and greater accessibility to detailed emergency information for persons with hearing and visual disabilities.

The cable industry recognizes the importance of a public warning system that responds to the public's need for timely information in protecting life and property during crisis situations. And we therefore support ongoing efforts to utilize advanced digital technology to promote the widespread dissemination of all-hazard alerts over a variety of communications platforms. For cable systems, we believe that this can be accomplished by building on the enormous investment of EAS participants in digital technology, equipment, and personnel training. Next generation approaches to simultaneous distribution of emergency messages across communications media are still under development, but at this stage the cable industry expects to be able to disseminate more advanced digital EAS delivery formats through interfaces with cable's existing digital standards and protocols.

The cable industry urges the Commission, along with its partner agencies, to facilitate the development of one, coordinated, fully-integrated nationwide public alert and warning system to displace the multi-layered governmental alerting process in place today. We believe that the presence of thousands of franchise-based alerting requirements and the disparate manner in

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[2] *Id.* at ¶ 1.

which states and localities implement emergency alerting has impeded the overall effectiveness and efficiency of EAS.

In addition, consistent with Title VI of the Communications Act and, as a matter of public policy, the Commission should mandate that telephone companies providing video programming be part of the EAS regime, along with other video providers.

Last, with respect to the accessibility of emergency alerts to persons with disabilities, EAS message originators should be urged to provide detailed information in both audio and visual format so that individuals with hearing and visual disabilities receive the same information.

I. THE NEXT GENERATION PUBLIC ALERT AND WARNING SYSTEM SHOULD CONSIST OF ONE FULLY-INTEGRATED NATIONWIDE SYSTEM THAT BUILDS ON THE EXISTING EAS INFRASTRUCTURE AND ENABLES SIMULTANEOUS DISTRIBUTION ACROSS MEDIA PLATFORMS

In promoting the development of a more comprehensive, next generation public warning system, the Commission states that its objective is to develop a system "that enables officials at the national, state and local levels to reach affected citizens in the most effective and efficient manner possible. [The system] should have built-in redundancy features and use a variety of communications media so that officials can reach large numbers of people simultaneously."[3] We agree. A system that reaches a variety of modes of communications – e.g., television, radio, cellular and other wireless devices – is likely to be more pervasive and effective than a system relying totally on the override of audio or video programming on broadcast stations and cable systems viewed primarily in the home.

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[3] *Further Notice* at ¶ 62.

At this stage of the proceeding, where next generation technology is still under development, the cable industry believes that certain broad objectives should guide the Commission and other agencies in establishing a comprehensive cross-platform public warning system for federal, state and local alerts. First, we believe that the development of one over-arching, fully-integrated national system, rather than multiple parallel systems run by different entities, often on an uncoordinated basis, is the best course. As we have described in previous filings in this proceeding and discuss in the next section, the voluntary system of EAS alerting at the state and local level is generally working well, but its effectiveness is hampered by overlapping franchise-based legacy alerting systems.[4] This multi-layered governmental approach to emergency alerting often results in duplicative, inconsistent or unnecessary emergency warnings to viewers – at the risk of desensitizing the public to the importance of an emergency alert.

Second, there is no need to replace the current EAS infrastructure in order to achieve the benefits of next generation digital alerting systems, such as simultaneous distribution to multiple communications media (including radio, television, mobile telephones and PDAs).[5] Indeed, as the Commission recently acknowledged, "the EAS should remain an important component of any future alert and warning system."[6] As has been shown with the addition of new event codes since cable systems initially deployed EAS, existing equipment and technology may be upgraded with new software for the foreseeable future. And today's cable systems are capable of

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[4] *See* In the Matter of Review of the Emergency Alert System, Notice of Proposed Rulemaking, EB Docket No. 04-296, 19 FCC Rcd 15775 (2004), NCTA Comments and Reply Comments.

[5] Over the past seven years, the cable industry has invested approximately 100 million dollars to deploy EAS technology in its local cable systems. This is based on an average of $10,000 per headend for approximately 10,000 cable headends nationwide.

[6] *First Report and Order* at ¶ 18.

disseminating the contents of more advanced digital EAS delivery formats through sophisticated interfaces with cable's existing digital standards and protocols.

With regard to facilitating the simultaneous distribution of emergency messages over multiple platforms, the Further Notice specifically asks about the development of a media Common Alert Protocol or "CAP." The cable industry supports the concept of a CAP, and other efforts to incorporate a variety of communications networks and systems, also known as alternative public alert and warning systems (APAWS). Comcast Corporation and NCTA, on behalf of the industry, are actively involved in the National Capital Region Digital EAS (DEAS-NCR) pilot project, which is looking at ways to improve national public alert and warning during times of national crisis by utilizing public television stations and the digital networks of other media and telecommunications industries.

As a general matter, cable companies expect to be able to deliver advanced digital EAS messages to their customers as they are received from an EAS originating source. There may be implementation issues, involving hardware, interfaces and software applications, associated with achieving inter-media, cross-platform capabilities but it is too soon to comment on such matters until the technology is further developed and tested.

Third, the Further Notice raises the issue of whether EAS messages should be distributed directly to media outlets, rather than through the hierarchal daisy-chain distribution system, where the message goes through a series of designated entry points depending on the broadcast station's or cable system's function within EAS. There are inevitably breakdowns in the primary entry point (PEP) and the subsidiary local primary (LP – 1, 2, 3, etc.) source system, where a broadcast station or other EAS source in the chain may either fail to monitor another EAS source and/or fail to pass on an EAS message to other broadcasters or cable operators further down the

chain. With today's technology, a more streamlined approach is highly feasible, where originating sources, such as the National Weather Service, could deliver messages directly to the transmitters or headend facilities of all broadcasters and cable operators for distribution to the public. We believe this approach would enhance the overall efficiency of EAS.

In sum, with advancements in digital delivery of cable services, there will likely be many options for improvements in the way emergency warnings are disseminated to cable subscribers in the future. NCTA and the cable industry will continue to work with the FCC, relevant agencies of the Department of Homeland Security and the Department of Commerce, state and local governments, and the private sector to explore these possibilities.

II. THE COMMISSION'S GOAL OF A COMPREHENSIVE ADVANCED PUBLIC WARNING SYSTEM WOULD BE BEST ACHIEVED THROUGH FEDERAL, STATE AND LOCAL COORDINATION ON THE ISSUANCE OF ALERTS UNDER ONE SYSTEM, RATHER MULTIPLE ALERTING SYSTEMS

In the Further Notice, the Commission seeks comment on coordination between federal, state and local governments in delivering public alerts during natural disasters and other emergencies. In particular, it asks whether its rules should be amended to require EAS participants to transmit EAS messages issued by state governors in the states in which the participants' provide service (including adopting an additional originator code for state governors). Under many EAS area plans developed by State Emergency Communications Committees (SECCs) and Local Emergency Communications Committees (LECCs), state governors are already authorized to issue EAS alerts on a state-wide or local area basis during emergency situations. Moreover, state governors may use the current code for "civil authorities" or CIV code (and additional information may be appended to the message through the station or cable system ID code). It appears that it is not necessary, therefore, for a specific code to be

identified for state governors, who generally work through their state and local emergency managers in issuing alerts to the public.

The whole area of improved coordination between federal, state and local governments on the issuance of public alerts has been of significant concern to the cable industry. The industry appreciates its important role in disseminating local emergency alert information. However, as NCTA fully discussed in the initial phase of this proceeding, the patchwork of emergency alert obligations pursuant to thousands of local franchise agreements vitiates this role.[7] Local cable operators have experienced a variety of situations that have adversely affected the efficacy of emergency alerts, ranging from what events should trigger activation of legacy alerting systems to repeated, duplicative or inconsistent activations in disregard of the protocols and procedures set forth in state or local area plans. The discretionary exercise of cable emergency alerting capabilities by some local officials has diminished the overall effectiveness of the system.[8]

Furthermore, many inappropriate alerts result from errors by the EAS originating entity in encoding the message. Since cable operators typically use EAS in the automated mode, they

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[7] *See In the Matter of Review of the Emergency Alert System, Notice of Proposed Rulemaking*, EB Docket No. 04-296, 19 FCC Rcd 15775 (2004), NCTA Comments and Reply Comments.

[8] Some franchise agreements, for example, call for the cable operator to install and maintain an operational Emergency Alert System consistent with FCC regulations and at the same time provide a designated town or county official with a separate emergency override capability to enable the official to interrupt and cablecast an audio and video message on all channels, for as long and as frequently as deemed necessary by the official. Today's regional cable systems are generally not configured to correspond to specific political boundaries and while some have the capability to target specific areas, some local officials issue system-wide alerts that extend far beyond their particular town or community. This only unnecessarily warns or confuses cable viewers. *See* e.g., *Amendment of Part 73, Subpart G of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, 12 FCC Rcd 15503 (1997) (the Commission expressed concern "about possible conflict between requirements of local jurisdictions and federal regulations regarding the EAS rules," concluding that "should any local jurisdictions' EAS requirements conflict or interfere with those adopted by the Commission, the local jurisdictions' requirements will be preempted.").

have no means to assess the accuracy of the message. This problem further points to the need for greater consistency and tighter control over who can originate an alert.

NCTA recommends that the federal government lead the who, what, when and where of emergency alerting through a comprehensive, coordinated nationwide public warning system applicable to all states and localities. States and local governments, through their SECCs and LECCs, would continue to play a major role in the development of model state and local emergency plans, including standards for the issuance of local alerts, and the designation of appropriate government personnel to activate alerts. But legacy alerting systems and discretionary use of the system by local officials should not be part of the next generation regime. Public safety is a critical issue and governmental efforts should move forward in a unified fashion.

III. TELEPHONE COMPANIES THAT PROVIDE VIDEO SERVICES SHOULD BE REQUIRED TO PROVIDE EMERGENCY ALERT MESSAGES TO THEIR CUSTOMERS AS IS REQUIRED OF OTHER VIDEO PROVIDERS

In the Further Notice, the Commission asks whether telephone companies that provide video programming in competition with cable television service providers and others should have public alert and warning responsibilities similar to those of other news and entertainment providers. The simple answer is that telephone companies providing video programming to subscribers appear to be cable operators as defined by Title VI of the Communications Act and so should have the same responsibilities of other cable operators. Even if this were not the case, it would make sense as a matter of public policy to subject telco video providers to such responsibilities.

Section 651 of the Communications Act makes clear that if telephone companies provide video programming by any means other than radio, or as a common carrier, or open video system

provider, they are subject to the provisions of Title VI as cable operators.[9] The Regional Bell telephone companies that have initiated or announced plans to provide video programming services to residential customers areas using either fiber to the premises or fiber to the node are subject to the requirements of Title VI that apply to cable television providers. Telco TV programming delivery is predominantly a one-way transmission of "video programming"[10] and therefore is a "cable service."[11] Similarly, the telco TV delivery system is a "cable system" and the telco TV provider is a "cable operator" under the statute.[12] Indeed, in the markets where Verizon has introduced its FiOS service, it is providing a familiar line-up of popular cable program networks, local broadcast channels, and other packages and services. Moreover, both Verizon and AT&T's physical facilities mirror a typical cable system, i.e., "a set of closed transmission paths" designed to provide video programming via some combination of fiber optic,

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[9] Section 651(a)(3)(A) to the Communications Act provides that "[t]o the extent that a common carrier is providing video programming to its subscribers in any manner other than [via radio, as a common carrier or OVS provider] . . . such carrier shall be subject to the requirements of [Title VI]."

[10] "[T]he term 'video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station." 47 U.S.C. § 522(20).

[11] "[T]he term 'cable service' means – (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service." 47 U.S.C. § 522(6).

[12] "[T]he term 'cable operator' means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system." 47 U.S.C. § 522(5). "[T]he term 'cable system' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems." 47 U.S.C. § 522(7).

coaxial cable or other plant utilizing local public rights-of-way.[13] And all of these providers – cable and telcos – are looking at various strategies for maximizing their networks, including IP technology and switched video. This does not change the regulatory character of the service.[14]

Therefore, as a legal matter, telephone companies providing video services should be subject to the EAS rules that apply to cable operators under Title VI.

As a policy matter, even were the Commission to classify telco TV as something other than a cable system, there is every reason to include telephone companies among government-mandated EAS participants. The Commission has continually expanded the EAS rules to encompass video delivery media beyond broadcasting and cable, which are obligated to participate by statute.[15] In 1997, in expanding EAS to include wireless cable systems, the FCC stated:

> [O]ur goal is to provide emergency alerts to receivers of video programming. We believe that it is important to provide emergency information to as many people as possible thorough different means of delivery and that including a wide variety of multichannel video providers such as wireless cable could provide important safety information to viewers.[16]

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[13] 47 U.S.C. § 522(7).

[14] *See e.g.*, NCTA Ex Parte to Tom Navin, Chief, Wireline Competition Bureau, re: IP-enabled Services, regarding SBC's Petition for Declaratory Rulemaking and encouraging the FCC to focus on IP voice services and that the services provided by SBC fall within existing definition of Title VI; WC Docket No. 04-35, July 29, 2005. The same ex parte letter was also submitted to Donna Gregg, Chief, Media Bureau, July 29, 2005.

[15] In 1992, Congress required cable systems to "comply with such standards as the [Federal Communications] Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations . . . .," 47 U.S.C. § 544(g). With regard to other video providers, the Commission has looked to its section 151 public safety mandate, section 303(r) general rulemaking authority and section 606 of the Communications Act, which grants specific, communications-related powers to the President in time of war or national emergency. *See e.g.*, *First Report and Order* at ¶ 5, n. 13.

[16] *Second Report and Order* at ¶ 38.

In modifying the rules applicable to wireless cable operators in 2005, the Commission reiterated: "our EAS rules are designed to ensure that individual TV viewers, including viewers of wireless cable TV systems, receive all national level EAS alerts, no matter what channel the viewer may be watching."[17]

In adding DTV broadcasters to the list of EAS participants, it recently said such action "furthers the public interest by ensuring that the public – regardless of the form of technology used – receives emergency information."[18] Similarly, in extending EAS to direct broadcast satellite providers, the Commission said "it is essential that [DBS] customers have access to the same type of emergency information that they have come to expect from traditional media sources. The Presidential EAS message must be accessible to all television viewers, regardless of the distribution medium."[19]

The EAS regime now includes broadcasters, cable operators, direct broadcast satellite providers, wireless cable providers and other media. The Commission is exploring ways to include wireless service providers and products and other communications providers in an effort to ensure the dissemination of emergency information to the public as widely as possible. Telephone-company delivered video services should be part of the EAS regime.

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[17] *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No 04-51, *Report and Order*, rel. February 7, 2005.

[18] *First Report and Order* at ¶ 21.

[19] *Id.* at ¶ 54.

IV. EAS MESSAGE ORIGINATORS SHOULD PROVIDE DETAILED INFORMATION IN BOTH AUDIO AND VISUAL FORMAT SO THAT INDIVIDUALS WITH HEARING AND VISUAL DISABILITIES RECEIVE THE SAME INFORMATION

In the Further Notice, the Commission seeks comment on making public warnings and other emergency information more accessible to persons with disabilities. The Commission points out that various commenters to the initial EAS NPRM "argued that one of the major shortcomings of EAS is the lack of the same specific information in the visual, text display of the EAS message as that present in the EAS audio feed generated by the source of the message." This is because the visual portion of the EAS message is derived from the header code of the message, rather than from the audio message feed. To address this concern, the Commission encourages EAS message originators, such as FEMA and state emergency operations centers, to provide detailed EAS messages in both audio and visual format to video programming distributors so that individuals with hearing and visual disabilities receive the same information.

The cable industry supports this approach. EAS message originators determine the nature and amount of information provided in the message. Cable operators will deliver the information in both audio and visual format in the manner it is received from the EAS message originator.

In the absence of more detailed information from EAS message originators, the Further Notice seeks comment on whether EAS participants should be "required to make an audio EAS message accessible to those with hearing disabilities by using a transcription of the audio message through the use of closed captioning or other methods of visual presentation, such as open captioning, crawls, or scrolls, that appear on the screen."[20]

[20] *Further Notice* at ¶ 78.

First, it should be noted that cable systems receive and disseminate emergency alerts on an automated basis. Requiring the transcription of an audio EAS message at the cable headend for visual presentation by cable systems would require dedicated personnel at the headend and could defeat the automated nature of EAS message distribution. This is simply not a workable approach, and would impose substantial costs at a time when next generation public warning systems are under development.

Second, the Emergency Alert System is a very different regulatory obligation than the closed captioning rules. The *EAS* rules require cable systems to override all channels with an audio and video presidential EAS message. The Commission's *closed captioning* rules require cable systems to provide the "critical details" of local emergency information, usually provided by live programming on local and regional cable news channels, such as News Channel 8 or New York One, or local origination channels.[21] Cable operators do not interrupt national cable program networks carried on their systems to provide local emergency information, apart from passing through EAS messages on all channels as received at the headend from a state or local EAS message originator on a voluntary basis.

Nevertheless, as new technologies develop, the cable industry will continue to work with the disability community and others involved in public safety efforts to improve access to vital emergency information under EAS for persons with vision and hearing disabilities.

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[21] As described in the Notice, the rules require video programming distributors to provide local emergency information, i.e., "critical details" about the emergency and how to respond to the emergency (e.g., the affected areas, evacuation orders, evacuation routes, approved shelters, road closures). Specifically, under section 79.2 of the rules, video programming distributors must make the audio portion of emergency information accessible to person with hearing disabilities using closed captioning or other methods of visual presentation. With regard to persons with visual disabilities, video programming distributors are required to make emergency information provided in the video portion of a regularly scheduled newscast, or a newscast that interrupts regular programming, accessible through aural description in the main audio. Emergency information that is provided in the video portion of programming (i.e., textual information in a crawl or scroll) that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, must be accompanied with an aural tone.

CONCLUSION

For the foregoing reasons, we urge the Commission to work toward comprehensive reform of the current multi-layered federal, state and local governmental emergency alerting system as it promotes the next generation of EAS.

Respectfully submitted,

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